

**DOCKET NO. 267-SE-0523**

<b>STUDENT,</b>	§	<b>BEFORE A SPECIAL EDUCATION</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	<b>HEARING OFFICER FOR</b>
	§	
<b>CONROE INDEPENDENT SCHOOL DISTRICT,</b>	§	
<b>Respondent</b>	§	
	§	<b>THE STATE OF TEXAS</b>

**DECISION OF THE HEARING OFFICER**

**I. Statement of the Case**

Petitioner, Student, filed a request for an impartial due process hearing (the Complaint) pursuant to the Individuals with Disabilities Education Act (IDEA). The Complaint was received by the Texas Education Agency (TEA or Agency) on the 2<sup>nd</sup> day of May 2023, and the Notice of Filing of Request for a Special Education Due Process Hearing was issued by TEA on May 3, 2023. The Respondent to the Complaint is the Conroe Independent School District (hereinafter District or Respondent).

**II. Issues**

**A. Petitioner's Issues**

Petitioner alleges that the District has failed to comply with its Child Find obligations and further has denied Student a free appropriate public education (FAPE) as follows:

- Whether the District violated its Child Find obligations in failing to timely evaluate Student in all areas of suspected disability or need;
- Whether the District violated the IDEA by failing to develop an Individual Education Plan (IEP), including the provision of educational and related services;
- Whether the District should reimburse Petitioner for private placement; and
- Whether the District violated procedural obligations.

## B. Petitioner's Requested Relief

While Petitioner requested a number of remedies in the Petition as follows:

- Find that the Petitioner's rights under Child Find have been violated;
- Find that the Student's right to FAPE has been violated;
- Find that the District should reimburse the Student's parents for past and future private dyslexia tutoring;
- Find that the District should reimburse the Student's parents for past and future private counseling;
- Find that the District should provide \*\*\* services to the Student; and
- Find that the District should reimburse the Student's parents for legal fees and provide compensatory damages.

## C. Respondent's Issues and Legal Position

In addition to a general denial, Respondent District specifically pointed out that it did evaluate the Student timely. It also noted that it had evaluated the Student several years prior, and the evaluation found no indication of dyslexia, and therefore Student did not qualify. Further, upon the subsequent request when the District was initiating the evaluation, the Student's parents consented to only a dyslexia evaluation and not the FIIE. And further, when they did request the FIIE, the District did evaluate the Student.

With regard to the claim of a denial of FAPE, the District evaluated the Student and found Student eligible for special education under emotional disturbance (ED) and a learning disability. Respondent further contends that an ARD committee meeting was held and the District provided the Student accommodations and supports.

## III. Procedural History

Upon filing of the Complaint, the Agency assigned the matter to this Hearing Officer, who then issued the Initial Procedural Scheduling Order on May 4, 2023. After some continuances, and other pre-hearing procedures, the due process hearing was scheduled for, and took place on Thursday and Friday, January 18-19, 2024. Thereafter, Orders 7, 8, and 9 set forth the schedule for post-hearing briefs and the decision due date as noted below. A detailed procedural history is set forth below in Section D, noting all preliminary matters addressed by the parties and the hearing officer. The post-hearing orders are detailed in Section E.

#### A. Representatives

Petitioner filed the case as a *pro se* party with the assistance of the family's advocate. Thereafter, Petitioner was represented throughout the rest of the case by counsel, Ms. Yvonnilda Muniz of the Law Office of Yvonnilda Muniz, P.C. The Respondent District was represented by Ms. Amy Tucker of Rogers, Morris & Glover, LLP.

#### B. Mediation and Resolution

The parties participated in a Resolution Session on May 17, 2023, and no agreement or resolution was reached at that time. The parties declined to participate in mediation.

#### C. Continuances

When the case was initially filed, the Petitioner was *pro se*, and at the first Pre-Hearing Conference (PHC), a request for a continuance was made so that Petitioner could obtain legal representation. Legal counsel filed an appearance on June 5, 2023, and the matter was continued, with hearing dates of September 6 & 7, 2023.

On August 24, 2023 Petitioner filed an Unopposed Motion for Continuance. Order 3 granting the continuance set the hearing for November 15 & 16, 2023, with a decision due date of January 8, 2024. Thereafter, on October 20, 2023, Petitioner filed an Opposed Motion for Continuance; the parties conferred thereafter, and the continuance was agreed. Order No. 4, granting the continuance and setting the hearing dates of January 18 & 19, 2024 was then issued on October 30, 2024. The post-hearing continuances are set forth below.

#### D. Preliminary Matters

After the issuance of the Initial Scheduling Order on May 4, 2023, the Respondent District filed its Response to the Complaint. The initial PHC was held on May 25, 2023, and a continuance requested in order for the Petitioner to obtain legal counsel. A notice of appearance was then filed on June 5, 2023. Order 2, the Order following the PHC and for Continuance was issued on June 6, 2023.

On July 17, 2023, Respondent District filed its Request for Commissions seeking the records of the Petitioner. They were signed and returned to Respondent. On August 21, 2023, the second PHC was held. Thereafter, and prior to the issuance of the Order following the PHC, Petitioner on August 24, 2023 filed an Unopposed Motion for Continuance. Order No. 3 granting the continuance was issued on August 27, 2023.

Petitioner also filed a Motion Requesting an Exception to the Statute of Limitations on August 23, 2023 and Respondent filed its Response to the Motion on August 25, 2023. No ruling was issued at that time.

On October 20, 2023, Petitioner filed an Opposed Motion for Continuance. However, the parties were able to agree on new hearing dates, and Order No. 4, setting forth the Third Revised Scheduling Order was issued on October 30, 2023.

Both Petitioner and Respondent made their respective timely disclosures on January 9, 2024. On January 15, 2024 Respondent filed an Unopposed Motion to allow the appearance and testimony of two witnesses remotely. The Order approving the remote appearance, Order No. 5, was issued on January 15, 2024.

Thereafter, on Tuesday, January 16, 2024, Respondent filed its Objections to some of the Petitioner's Exhibits listed in the Disclosure. Petitioner did not file a Response to the Objections, and Petitioner did not file any Objection to Respondent's Exhibits. The Order, Order No. 6, with rulings on the Objections was issued on January 17, 2024. The Order also contained a ruling that the Petitioner would be able to present evidence at the hearing as to an exception to limitations and why the two-year Statute of Limitations should not apply in this case, as set forth in the August 23, 2023 motion. As no evidence was presented, at this time it is **OVERRULED**, and the Statute of Limitations of two years is proper and applicable. Therefore, the time at issue in this case is from May 2, 2021 forward, and thus this decision will consider only violations of the IDEA that may have occurred between May 2, 2021 and May 2, 2023.

#### E. Post Hearing Matters

Upon the conclusion of the presentation of evidence, but prior to closure of the hearing, the parties discussed the requisite time for receipt of the transcript, filing closing briefs, and the final decision. The parties agreed to the due date for the Closing Briefs as February 20, 2024, with the Decision Due as March 4, 2024. Order No. 7, setting forth those dates was issued on January 20, 2024. Thereafter, on February 7, 2024, the parties jointly requested a one-week continuance of the due dates for the Closing Briefs, and the corresponding Decision. Order No. 8 was then issued on February 8, 2024, setting forth the due dates for the Briefs as February 27, 2024, and the Decision Due Date as March 12, 2024.

Thereafter, on February 26, 2024 the parties submitted to the hearing officer an agreed request or motion to expand the number of pages in the closing briefs and for another short extension of time for filing the briefs. Order No. 9, granting the motion was then issued on February 27, 2024, setting forth the deadlines of March 1, 2024 for the Closing Briefs, and March 15, 2024 for the Decision. This Decision is now timely issued.

#### IV. Findings of Fact\*

1. The Student resides with Student's parents, and at all times relevant to this case, was within the boundaries of the Conroe Independent School District [hereinafter CISD or District]. Student is currently \*\*\* years old, and \*\*\*. The Student attended school in the District from \*\*\*.<sup>1</sup>
2. Evidence indicated that the Student was evaluated for dyslexia in 2017, when Student was in the \*\*\* grade. At that time, Student did not qualify as a student with dyslexia or dysgraphia. The evaluation did indicate that some situational anxiety may have contributed to a lower performance on the timed portion of the evaluation.<sup>2</sup>
3. Testimony indicated that some data was missing from the evaluation, and that the evaluation may have been incomplete.<sup>3</sup> Other testimony, however explained that at the time this evaluation was completed, 2017, that the requirements and practice was to have the report as it was on the form, and that no additional information was necessary.<sup>4</sup>
4. Evidence further demonstrated that the Student, during Student's \*\*\* and \*\*\* grade years passed all classes, with average to very good grades, and further passed all STAAR examinations.<sup>5</sup>
5. Dr. \*\*\*, the current Dyslexia Coordinator for the District, testified that in 2017 there was no data gathered to support a finding of dyslexia, and that the test was, in fact, accurate at that time. She further noted that as dyslexia is on a spectrum of severity, and presents differently in each individual. She testified that the Student, when found to be dyslexic in 2022, exhibited a milder form. She also noted that throughout \*\*\* school the Student was reading on grade level, except at one time was a partial level below.<sup>6</sup>
6. During the Student's \*\*\* grade year, the Covid-19 pandemic closed the schools in March 2020. Prior to that time, the Student's grades were similar to what they had been throughout \*\*\*, with As, Bs, and Cs.<sup>7</sup>

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\*References to the Due Process Hearing Record throughout this section are as follows: Citations to Petitioner's Exhibits and Respondent's Exhibits are designated with a notation of "P" or "R" respectively, followed by the exhibit number or letter and page number. Citations to Joint Exhibits are designated with a notation of "J" and followed by the exhibit number and page number. Citations to the transcript are designated with a notation of "T" followed by the page number.

<sup>1</sup> T. 294; P.5:1.

<sup>2</sup> T. 115-116; J.10:5.

<sup>3</sup> T. 26.

<sup>4</sup> T.25-26, 422-425.

<sup>5</sup> J. 2:26; J.12:2-3; J.14:2.

<sup>6</sup> T. 433-434, 453-454.

<sup>7</sup> J.12.

7. During the fall semester, 2020, students in the District had the option of attending classes in-person or alternatively online. The Student opted to attend classes online, as there were health concerns with the family, as well as the Student \*\*\*self.<sup>8</sup>
8. During that fall semester, the Student had difficulty completing assignments and turning in Student's work. Student communicated with Student's academic counselor and teachers by email, noting the difficulties Student was having.<sup>9</sup>
9. Ms. \*\*\*, an academic counselor with the District, was the Student's academic counselor during Student's \*\*\* grade years. She noted that upon the return to school following the Covid shutdown, many students struggled with difficulties, in both their academics as well as psychologically.<sup>10</sup> She also testified that she encouraged students to attend school in-person. She encouraged the Student to attend in-person.<sup>11</sup>
10. A large number of students were negatively impacted by the pandemic, and learning. It was noted that a number of the students at the \*\*\* (\*\*\*) struggled with the online platform, as well as keeping a regular schedule.<sup>12</sup>
11. Testimony also indicated that it was typical of many students in the District, during the Covid time, to be failing their courses. A large number of the students needed extra time in order to complete assignments. Additionally, many students during this time, were going through anxiety and seeing therapists.<sup>13</sup>
12. Expert testimony indicated that studies have demonstrated that learning for all students – nationally and even internationally – has declined significantly during and after Covid, and that learning is still not at pre-Covid levels. It was also explained that there has been a high number of absences in schools nationally since the Covid pandemic.<sup>14</sup>
13. In a rather lengthy email to Ms. \*\*\* the Student indicated that the new online platform was difficult for some learners, as it was for Student, and noted that Student's friends were having the same difficulties.<sup>15</sup> A national expert, Dr. \*\*\*, stated that many students nationwide were struggling with both anxiety and online learning during the covid and post-covid time.<sup>16</sup>

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<sup>8</sup> T. 100, 320-321.

<sup>9</sup> T. 100-101, 275-276.

<sup>10</sup> T. 70-72, 89.

<sup>11</sup> T. 102.

<sup>12</sup> T.89, 100-101, 105.

<sup>13</sup> T.73-74, 89.

<sup>14</sup> T. 467-468, 473, 493-494.

<sup>15</sup> J.22:17.

<sup>16</sup> T. 490-492.

14. During the fall semester 2020, specifically in November, when the Student was attending school online, the Student's Parent was informed by an Assistant Principal that the counselor had planned to visit the home to check on Student. The visit, however did not occur, and no communication with the family was made. Testimony noted that the Student's Parent did not receive a response to Student's emails.<sup>17</sup>
15. During this same time, fall 2020, the Student's Parent testified that Parent feared that the Student \*\*\*.<sup>18</sup> There was no evidence that the District was ever notified of this or had such knowledge.
16. The Student's Parent testified that during the fall semester 2020, when the Student was failing several courses, that Parent was compelled to have the Student withdraw from the District. During the time for withdrawal, some confusion arose as to whether Student would need to take the semester final examinations, and this caused nearly a day of increased stress and anxiety for the Student and Student's parents.<sup>19</sup>
17. During this same time, the Student was seeing a psychologist or therapist, and had starting with therapy in the summer between \*\*\* grade, which was in 2020, when Covid was at its peak.<sup>20</sup>
18. The Student withdrew and thereafter attended \*\*\*, a private school, in the spring of 2021. While at \*\*\*, the Student did well, and was able to successfully complete both semesters of Student's \*\*\* year and received very good grades – all As. Testimony also indicated that Student was doing well psychologically, and did not experience anxiety.<sup>21</sup>
19. Thereafter, the Student decided to return to the Conroe School District. Although Student's parents explored the possibility of dual enrollment with \*\*\* and the District, such was not approved by the District, and the Student then enrolled in all of Student's classes at the \*\*\* in the District.<sup>22</sup>
20. During the 2021-2022 academic year, the Student's \*\*\*, the testimony revealed that Student started the semester doing well, and thereafter Student had difficulties after Student \*\*\*.<sup>23</sup>

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<sup>17</sup> T. 74-75, 99-100, 315; J.22:17.

<sup>18</sup> T. 313.

<sup>19</sup> T. 249-251, 325-326.

<sup>20</sup> T. 251-252.

<sup>21</sup> T. 253, 276-277.

<sup>22</sup> T. 82, 254-255; J.22:22-23.

<sup>23</sup> T. 87, 106, 364.

21. The Student \*\*\*. Thereafter, the \*\*\* apparently caused anxiety and \*\*\*, which caused Student to miss school.<sup>24</sup> Student was also \*\*\*, and there was some indication of \*\*\*.<sup>25</sup>
22. The Student also then had Covid in January of 2022, as did \*\*\*, which also caused Student to miss school at the beginning of the spring semester.<sup>26</sup>
23. Testimony also indicated that the Student's \*\*\* that contributed to missing school that semester. Further, the entire \*\*\*.<sup>27</sup>
24. At the end of Student's \*\*\* year, the \*\*\* caused the Student a great deal on emotional distress. Student stopped \*\*\*.<sup>28</sup> These events contributed to Student's absence from school and mental health issues.<sup>29</sup>
25. The testimony of the Student's teachers and counselors was unequivocal that there was no evidence of an instructional need for specially designed instruction for the Student, as many if not most of Student's difficulties were attributed to life events and as noted, \*\*\*.<sup>30</sup>
26. Near the end of Student's \*\*\* year, on April \*\*\*, 2022, the Student's Parent requested 504 services for Attention Deficit Hyperactivity Disorder (ADHD). Parent was apparently informed by Ms. \*\*\* that it was very late in the school year, and thus would need to wait until the fall semester next academic year. The process was initiated in July 2022.<sup>31</sup>
27. The Student's Parent also requested another dyslexia evaluation at the end of the Student's \*\*\* grade year, specifically on April \*\*\*, 2022. The Evaluation was started by at least May \*\*\*, 2022, as one of the Student's teachers, Mr. \*\*\*, received a request to complete a form and responded on May \*\*\*, 2022. The evaluation was then completed in September, 2022.<sup>32</sup>
28. In summer of 2022, the District summer school tuition was waived for all students, as many were continuing to have difficulties after the Covid shutdown. Many students did not pass classes and needed \*\*\*.<sup>33</sup> The Student had failed \*\*\* during the fall semester, and had to take it in the summer, where Student passed the course with a \*\*\*.<sup>34</sup>

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<sup>24</sup> T. 106, 260, 364, 398; J.21:45.

<sup>25</sup> T. 182.

<sup>26</sup> T. 103, J.21:37-39.

<sup>27</sup> J.20:13, 15, 17.

<sup>28</sup> T.282.

<sup>29</sup> T. 103, 206; J.21:15-17.

<sup>30</sup> T.103.

<sup>31</sup> T.256, 262; J.20:211.

<sup>32</sup> T. 262; J.21:11-13.

<sup>33</sup> T.104; J.21:5-8.

<sup>34</sup> T. 92; J.11:1.

29. One consequence of some of the difficulties the Student was having with work completion resulted in a teacher declining to \*\*\* for Student to \*\*\*. Mr. \*\*\*, the \*\*\* teacher, noted that he had concerns with the Student's work ethic and could not recommend Student. He also testified that when the Student returned the following fall semester, that he learned about Student's successful attendance at \*\*\*, and \*\*\*, noting the importance of the Student's resilience.<sup>35</sup>
30. Mr. \*\*\* also noted that the post-covid year, the 2021-2022 school year, was difficult for most students, as there was a lot of disruption in learning. Mr. \*\*\* also testified that he had no suspicion of a need for special education, and regarding the Student's absences, he felt that the reasons for them, such as \*\*\*, reactions to the \*\*\*, and covid were cogent.<sup>36</sup>
31. Mr. \*\*\* also provided input for the Student's private evaluation. He noted that the Student was reading at, or above, grade level as \*\*\* student. Further, based on classroom observations and experiences, he noted that he saw no need for specialized education or supports.<sup>37</sup>
32. During the second part of the summer of 2022, the Student did attend \*\*\*. The Student indicated that \*\*\* was a very positive experience, and that the instructors were very supportive and helpful to those in attendance.<sup>38</sup>
33. The Student had requested that Student's parents have Student evaluated, as Student thought there was something wrong with Student, specifically autism.<sup>39</sup> The evaluation was done by \*\*\* and was to assess a number of issues, including that of intellectual functioning, and psychological and emotional issues. It was completed May \*\*\*, 2022. The evaluation included a private dyslexia evaluation. The results demonstrated that the Student was in the average range for all intellectual functioning, and that there were no indications of Dyslexia or Specific Learning Disability (SLD). Some testimony noted that the parents never shared this evaluation with the school or District, while another said that they did tell the District about it.<sup>40</sup>
34. The private evaluation also looked at Student's psychological and emotional issues and found that the Student's \*\*\* assessment was low. It also noted that the Student meets the criteria for \*\*\*, ADHD and \*\*\*.<sup>41</sup>

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<sup>35</sup> T. 203-204, 208, 283-284; J.21:9.

<sup>36</sup> T. 209, 217.

<sup>37</sup> T. 214; P.5.

<sup>38</sup> T. 262, 283-284.

<sup>39</sup> T.270, 331.

<sup>40</sup> T. 255, 262, 268-270, 331; J.18; P.5.

<sup>41</sup> P.5: 15,19,24,25.

35. During the 2021-2022 academic year, the Student was able to pass all of Student's courses, except for \*\*\* which, as noted, Student completed in summer school.<sup>42</sup>
36. Throughout the Student's \*\*\*, Student had a large number of absences. It was indicated that most of these were due primarily to Student's health, mental health and family related issues. Many of these were also documented in the numerous emails that the Student sent to Student's teachers and the academic counselor, Ms. \*\*\*.<sup>43</sup>
37. The evidence also shows that of those absences that were not due to health and family related issues, and \*\*\*, only three were unexcused.<sup>44</sup> Expert testimony demonstrated that absences from school increased across the board in Texas and the United States during the post-covid time.<sup>45</sup>
38. In April, and then again in August 2022, when the Student's parents were contacted about the evaluation by Ms. \*\*\*, a LSSP Intern with the District, she was told that they wanted only an evaluation for dyslexia, and not a Full Individual Evaluation (FIE). Thereafter, at the 504 meeting in October, the parents requested the FIE.<sup>46</sup>
39. At the beginning of the Student's \*\*\*, the academic counselors changed their responsibilities due to revision of the alphabetical assignments based upon student names. Ms. \*\*\* was the Student's academic counselor for the 2022-2023 academic year. She noted that she and the Student communicated a great deal via email. She was initially contacted regarding 504 services for the Student due to ADHD.<sup>47</sup>
40. Ms. \*\*\*, a 504 coordinator at \*\*\* first met the Student in August of 2022, at the beginning of Student's \*\*\*. She noted that she was looking at processing the 504 paperwork in May of 2022, but that the parent wanted to wait on the dyslexia evaluation.<sup>48</sup>
41. Ms. \*\*\* also testified that the number of students eligible for Section 504 accommodations increased after Covid.<sup>49</sup>
42. The Dyslexia Evaluation that was completed in September 2022 found that the Student had deficits in Student's reading and retrieval fluency. The Section 504 report was completed and was issued October \*\*\*, 2022. It provided that the Student struggles with finishing

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<sup>42</sup> T. 188, 283; J.11; J.21.

<sup>43</sup> T.398; J.16:11; J.21:44-45, 55.

<sup>44</sup> J.16; J:21.

<sup>45</sup> T. 479-480, 493-494.

<sup>46</sup> T. 120; J.8:3.

<sup>47</sup> T. 171-173; J. 20:205.

<sup>48</sup> T. 144-145, 148-149; J. 8.

<sup>49</sup> T.146.

Student's work when absent, has ADHD, dyslexia and \*\*\*. It provided that the Student be placed in general education classes with accommodations.<sup>50</sup>

43. The first scheduled Section 504 meeting, set for October \*\*\*, 2022 was rescheduled so that the District could have a representative attend, as the family was represented by an advocate. The actual meeting then was held on November \*\*\*, 2022, although the signature page notes that the meeting date was October \*\*\*, 2022.<sup>51</sup>
44. The 504 meeting deliberations noted that the Student's teachers had no concerns with Student's abilities, other than completing Student's work. When the 504 coordinator sent a request for information regarding needed accommodations to the Student's teachers, most said none, with one saying additional time.<sup>52</sup>
45. During the 504 meeting, the District offered that the Student attend \*\*\* program through classes. The family's advocate was critical of that dyslexia reading program for a number of reasons. Thus, the Student, Student's parents and their advocate declined the program for the Student.<sup>53</sup>
46. Evidence also indicated that a primary reason for declining this class was that the Student did not want to change Student's classes and Student did not want to stop \*\*\*, as Student felt they depended on Student. It was also noted that the Student did not want to change Student's schedule.<sup>54</sup>
47. Some testimony noted that the Student would have to test for the class and attend with \*\*\* students. The District's expert, Dr. \*\*\*, however, noted that there was no test to qualify for the \*\*\* class and that at the time, there were only \*\*\* students in the class, and that the program for each student was individualized.<sup>55</sup>
48. The evidence demonstrates that the Student's parents agreed to pay for the one-on-one tutoring program, discussed as being with a Certified Academic Language Therapist (CALT), and that the District offered to provide a room for the Student to attend such tutoring at school and online.<sup>56</sup>
49. Additional 504 accommodations provided for the Student included an additional class period to complete daily assignments, use of Learning Ally or online texts; hard copy of

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<sup>50</sup> T. 145; J.8.

<sup>51</sup> T. 176; J. 8.

<sup>52</sup> T. 157-158; J.8.

<sup>53</sup> T. 36-37, 41, 151; J. 8; P. 23-25, recording of 504 meeting.

<sup>54</sup> T. 151, 286, 452; P.7:4; P. 23, 25, recording of 504 meeting.

<sup>55</sup> T. 152.

<sup>56</sup> J.8:3; P. 23, 25, recording of 504 meeting.

notes; extra time on tests and quizzes, and oral administration of tests and quizzes. These accommodations were sent to the Student's teachers on November \*\*\*, 2022.<sup>57</sup>

50. While the Student declined the District's offer of \*\*\*, evidence showed that the Student then received services from a private dyslexia teacher or tutor Ms. \*\*\*. Ms. \*\*\*, who met the Student in November 2022, started the Student on \*\*\* program around the beginning of February, 2023. She testified that Student was successful and engaged during the course and received 44 hours of tutoring. She also noted at Student made progress demonstrated by progress monitoring, though documentary evidence was not provided that demonstrated such.<sup>58</sup>
51. Ms. \*\*\* also testified that \*\*\* was the appropriate program to use, because of Student's low \*\*\*. Her view, however, of the \*\*\* was refuted by the District's expert Dr. \*\*\*, who explained that the Student's \*\*\* was in the average range. Ms. \*\*\* also noted that the Student's comprehension was strong and that Student was highly intellectual.<sup>59</sup>
52. During the Student's \*\*\*, Ms. \*\*\* testified that she corresponded often with Student through email. Further, as a request for check-ins was requested by the family at the 504 meeting, Ms. \*\*\* had many meetings with Student primarily 'check-ins'. The Student, however, did not always attend.<sup>60</sup>
53. Evidence confirms that the parents received a copy of the Procedural Safeguards at the time of evaluation consent on November \*\*\*, 2022, and on February \*\*\*, 2023 and again on March \*\*\*, 2023.<sup>61</sup>
54. At the time the FIE was complete, the Student qualified for special education as a student with specific learning disability (dyslexia) and Emotional Disturbance (ED). The evaluation determined that Student's ADHD was controlled, and, as a result, Student did not have an eligibility under Other Health Impairment (OHI).<sup>62</sup>
55. Ms. \*\*\*, who was the evaluator, was serving the District as an Intern at the time the evaluation was done. She was supervised by Ms. \*\*\*, a LSSP with the District. The FIE was completed on February \*\*\*, 2023, and an Admission, Review, and Dismissal (ARD) committee meeting was set for March \*\*\*, 2023.<sup>63</sup> At that time, there were only about nine to ten weeks remaining in Student's \*\*\*. Student was scheduled to, and did, \*\*\*.<sup>64</sup>

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<sup>57</sup> T. 150-151; J.8:4; J. 20:23.

<sup>58</sup> T. 54-56; P.15:1.

<sup>59</sup> T. 52-53, 58-59, 435-437.

<sup>60</sup> T. 173, 182-183.

<sup>61</sup> J.2:24; J.20:30-31, 54,56.

<sup>62</sup> T. 32, 192; J.2, 3.

<sup>63</sup> T.111, 412; J. 2, 3.

<sup>64</sup> T. 266, 288; J. 2, 3.

56. The request for an Assistive Technology (AT) assessment was made on November \*\*\*, 2022, and the Student qualified, noting that Student would benefit from AT. Thereafter, several emails were sent to Student’s parents, looking for a time to train both the Student and Student’s parents on the technology. It is unclear whether anything was completed.<sup>65</sup>
57. At least \*\*\* of the Student’s teachers were asked for input for Student’s ARD meeting. Only a few expressed any behavior concerns, noting the sole concern was Student’s failure to complete work on time when absent. There were no instructional concerns expressed. Further, the Student had 80s and 90s in most classes and it was noted that the two grades that were lower, in 60s and 70s, were due to missing grades.<sup>66</sup>
58. At the March \*\*\*, 2023 ARD meeting, the evaluation and proposed services were reviewed and discussed.<sup>67</sup> Shortly thereafter, it appeared that the Student was failing some courses. However, as noted, Student \*\*\*.<sup>68</sup>
59. At the conclusion of the March \*\*\* ARD meeting, the \*\*\* Student marked disagree.<sup>69</sup>
60. The Student’s IEP provided four goals: a self-advocacy goal; a \*\*\* goal; a goal for timeliness in turning in assignments; and a counseling goal. It also provided that Student would receive the two twenty-minute sessions with the special education teacher, and three twenty-minute sessions with a counselor. There was no dyslexia goal or service noted.<sup>70</sup>
61. There was conflicting evidence concerning the Student’s prior 504 accommodations. While the Student noted that the accommodations were helpful, some of Student’s teachers, in completing the input for the ARD, noted that Student was not using them.<sup>71</sup>
62. There was also conflicting evidence regarding some of the Student’s services. Some of the testimony claimed that the Student was to receive services as a special education student simultaneously with the 504 accommodations. Others, however, noted that a student cannot be in both special education and also receive 504 services.<sup>72</sup>
63. Another ARD meeting was then held on March \*\*\*, 2023. There was also an ARD amendment on April \*\*\*, 2023, that added providing a “cool-off” opportunity for the Student as an additional service. The Student had requested that accommodation.<sup>73</sup>

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<sup>65</sup> J. 20:11-13; P. 9:1, 6.

<sup>66</sup> J.8:3.

<sup>67</sup> J.2.

<sup>68</sup> T.128; J. 11; P.16:9.

<sup>69</sup> J.2:26.

<sup>70</sup> J.2.

<sup>71</sup> J.2:5, 24-25.

<sup>72</sup> T. 94, 155-156, 193.

<sup>73</sup> T. 130-131; J. 1.

64. Testimony indicated that the counseling, that being three twenty-minute sessions with the Intern LSSP, was based upon the Student's need. No further explanation or details were provided as to how or why those were the services to be provided.<sup>74</sup>
65. Testimony also established that as part of the twenty-minute counseling sessions with Ms. \*\*\*, the Student \*\*\*. The Student noted that it did not help Student, and even Ms. \*\*\* herself noted that she could not recall if it was successful.<sup>75</sup>
66. Ms. \*\*\*'s testimony showed that \*\*\* might be used in counseling sessions to help with rapport building, but such is not the "crux of counseling as a related service". She also noted that Ms. \*\*\* and the Student already knew each other well by the time of the counseling sessions.<sup>76</sup>
67. Testimony established that Ms. \*\*\*, the Intern who completed the evaluation and was meeting with the Student as part of Student's IEP, was not informed as to a number of issues, including the lack of goals and services for dyslexia, the number of past absences, and Student's grades at the time.<sup>77</sup>
68. Additional evidence demonstrated that the Student passed all of Student's EOC examinations without accommodations.<sup>78</sup> And the Student did well and passed all of the required state assessments.<sup>79</sup> Further, the Student achieved \*\*\* STAAR without accommodations.<sup>80</sup>
69. The evidence shows that the Student was very proactive in contacting Student's teachers when falling behind in Student's work. Testimony indicated that the Student was respectful, apologetic and thankful in Student's email correspondence.<sup>81</sup>
70. In nearly all of the emails that the Student sent to Student's teachers and counselors, Student often mentioned a mental health issue as the reason for not completing Student's work. There was no evidence from these communications that any part of the reason for Student's incomplete assignments or failure to attend classes had anything to do with an inability to read or understand.<sup>82</sup> One email in particular noted that Student did not have issues with learning.<sup>83</sup>

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<sup>74</sup> T. 122; J.2.

<sup>75</sup> T.124, 287-288.

<sup>76</sup> T. 412-414.

<sup>77</sup> T. 120-131;

<sup>78</sup> J.8:1

<sup>79</sup> J.14.

<sup>80</sup> T. 124-125; 394.

<sup>81</sup> T.233; .21:34-39, 70-71.

<sup>82</sup> J. 20:14,16 ,49, 105, 121-130, 171; J.21:34-39, 70-71.

<sup>83</sup> J.22:26.

71. A number of the Student's teachers testified at the hearing, as well as completing the ARD Assessment for the Student. It was very clear that all of Student's teachers had a positive view of the Student and that Student's only weakness was the failure to turn in assignments timely. They also all noted that they had no indication, or 'red flags' that Student was a student with a disability who was in need of special education. They also shared that many other students were often late with turning in their work.<sup>84</sup>
72. There was also evidence of consensus among most of the teachers that the anxiety and stress that the Student was experiencing was also seen in many, perhaps most, of the students at the \*\*\*.<sup>85</sup>
73. Ms. \*\*\*, the Student's \*\*\* teacher during Student's \*\*\*, noted that Student's only real weakness was the failure to turn in Student's work timely. She also provided information for the Section 504 accommodations, and would work with the Student to have a plan in place to make up work. She also noted that she had no reason to suspect a disability or need for specialized instruction.<sup>86</sup>
74. Mr. \*\*\*, a \*\*\* teacher and the Student's \*\*\* teacher, also reported that the Student's strengths were reading fluency and comprehension, as such was needed to understand and solve \*\*\*.<sup>87</sup>
75. The Student wrote in Student's \*\*\* that Student had overcome roadblocks and improved Student's mental health, demonstrating Student's determination and resiliency.<sup>88</sup>
76. Ms. \*\*\*, the Student's \*\*\* teacher, testified that Student had some accommodations including the use of a computer, receiving hard copies of the notes, and Student had extra time to complete assignments, which Student did. Student received B grades most semesters in that class.<sup>89</sup>
77. Dr. \*\*\* also testified that the District's data, both formal and informal counters the Student's statement of Student's inability to read. She discussed Student's reading levels throughout Student's education, as well as the courses Student passed, including \*\*\* classes, along with passing the state examinations and EOCs.<sup>90</sup>
78. The Student received the assistance of the \*\*\*.<sup>91</sup>

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<sup>84</sup> T. 234, 358-359, 376, 392, 396.

<sup>85</sup> T. 137, 376-378.

<sup>86</sup> T. 225-230, 234; J. 6, J. 9.

<sup>87</sup> T. 385.

<sup>88</sup> T. 180, 190, 207-208; P.22.

<sup>89</sup> T. 167-168.

<sup>90</sup> T. 453-454.

<sup>91</sup> T. 344, 346; J.8:3.

79. Ms. \*\*\*, the Student's teacher in \*\*\* class, noted that the Student had a number of strengths, and the only weakness was that Student didn't always turn in the assignments in a timely manner. When Student fell behind, she noted that Student became anxious.<sup>92</sup>
80. Ms. \*\*\* also noted that nearly all of her students were experiencing anxiety concerning completing work, and that she had no suspicion of any need for special education. In fact, in her \*\*\* class, the Student was able to take a certification test and Student did very well on the test. which required Student to read and comprehend the directions, and then work \*\*\*to complete the tasks assigned in both \*\*\*.<sup>93</sup>
81. As noted, Dr. \*\*\*, an expert in school psychology, testified as to the impact of Covid on students, and specifically on their academics, learning, and mental health. She also noted that for many or most students there was unfinished learning as well as Covid Learning Loss, and this impacted all students, not just those with disabilities.<sup>94</sup>
82. Dr. \*\*\* also noted in her testimony that her work was focused on intervening and helping all students with the negative impacts of Covid. She also noted that during this time, the majority of students showed mental health difficulties from the traumas they were experiencing.<sup>95</sup>
83. Dr. \*\*\* also testified that a withdrawal from school would not be a clear indicator or red flag for a referral for a special education evaluation. In fact, she noted the withdrawal would happen so often that it did not trigger a referral.<sup>96</sup>

## V. Discussion

The following discussion reviews the legal standards that govern the considerations and issues brought forward in this case.

### A. Burden of Proof

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<sup>92</sup> T. 340-341, 345.

<sup>93</sup> T. 342-345.

<sup>94</sup> T. 465-468, 470.

<sup>95</sup> T. 473, 475-476.

<sup>96</sup> T. 479-480.

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. In essence, the burden of persuasion or proof falls upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5<sup>th</sup> Cir. 1993). No distinction has been established between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5<sup>th</sup> Cir. 2009).

In terms of application of this approach, the Fifth Circuit went on to establish that a presumption exists “in favor of a school system’s educational plan, placing the burden of proof on the party challenging it”. *White ex Rel. White v. Ascension Parish Sch. Bd.* 343 F.3d 373, 377 (5<sup>th</sup> Cir. 2003); *Teague* at 132. Accordingly, Petitioner bears the burden of demonstrating that the District violated its Child Find obligation and failed to provide the Student FAPE.

## B. Child Find and Evaluation

Child Find under the IDEA is an affirmative obligation on the part of school districts to have policies and procedures in place in order to locate, and timely evaluate, children with suspected disabilities in the district’s jurisdiction. The Child Find duty is triggered when a school district has reason to suspect a disability, along with reason to suspect that there is a need for special education and related services.

Thus, it is clear that school districts are required to evaluate all children where a suspected disability exists. Further, if a parent requests an evaluation, then the District is obligated to respond within fifteen school days as to their agreement to complete the evaluation or conversely deny the request. See 19 TEX. ADMIN. CODE §89.1011(b). Additionally, when conducting an evaluation, a school district must comply with the procedures set forth in 34 C.F.R. §§ 300.304-300.311. Once the evaluation is complete, the Admission, Review and Dismissal (ARD) committee has the responsibility to make determinations of eligibility, and if the student is found eligible, then design and implement educational as well as related services for the student. Even if a disability condition is identified, the second part of the eligibility determination requires that a need for specially designed instruction, or educational services, as a result of the disability exists. Consequently, a student who meets eligibility criteria but who does not show a need for special education services, has not met the definition of a student with a disability under the IDEA.

34 C.F.R. §300.8 provides further clarification in saying that:

*“...if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.”*

34 C.F.R. §300.8(2)(i).

Courts are clear that the Child Find obligation is

*“triggered when the local educational agency has reason to suspect a disability coupled with reason to suspect that special education services may be needed to address that disability.” El Paso Indep. Sch. Dist. v. Richard R.R., 567 F. Supp. 2d 918, 950 (W.D. Tex. 2008). Thus, it is clear that the suspicion must be of both the disability and the need for special education services.*

Once the evaluation has begun, or consent from the parent received, then the timeline must be considered. The FIIE and its corresponding written report must be completed no later than 45 school days from the date the school district obtains written consent. Tex. Educ. Code § 29.004(a)(1).

In terms of the actual evaluation under the IDEA, the school district must (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child’s IEP; (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b).

Additionally, should a parent disagree with a district’s evaluation, they may request an Independent Educational Evaluation (IEE) or private evaluation. The district then may grant the request, and allow the private evaluation at district expense, or alternatively file a due process proceeding to defend the evaluation. 34 C.F.R. § 502. Implied, then is a requirement that a district first complete its evaluation.

### C. Duty to Provide FAPE

A primary purpose of the IDEA is to ensure that all children with disabilities have available a free, appropriate public education (FAPE) as well as related services. It is essential that the educational and related services are designed to meet the unique needs of that particular student. 34 C.F.R. § 300.39 (b)(3). Under the IDEA, school districts have a duty to provide a FAPE

to all children with disabilities between the ages of three and twenty-one who reside within the jurisdictional boundaries of the district. 34 C.F.R. §300.101(a).

Additionally, the United States Supreme Court has provided guidance as to the determination of whether a school district provided FAPE to a student, with both substantive and procedural considerations. Specifically, the district must: comply with the procedural requirements of IDEA; and, design and implement a program that is reasonably calculated to enable the student to receive an educational benefit. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982). Further, 'educational benefit' has been defined as that which is meaningful and provides a basic floor of opportunity or access to specialized instruction and related services individually designed to provide educational benefit. *Id.*

In order to meet its substantive obligation under the IDEA, the school district must offer an individualized education plan (IEP) that is reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances. The adequacy of a given IEP turns on unique circumstances of the students for whom it was created and the student's progress must be something more than mere de minimis progress. *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 1000-1001 (2017).

The Fifth Circuit has developed the elements or benchmark for the determination of FAPE. These four factors must be assessed in order to determine whether the IEP in issue and as developed and implemented was reasonably calculated to provide students with necessary educational benefit under the IDEA. These factors are as follows:

- Whether the program is individualized on the basis of the student's assessment and performance;
- Whether the program is administered in the least restrictive environment (LRE);
- Whether the services are provided in a coordinated and collaborative manner by key stakeholders; and
- Whether positive academic and nonacademic benefits are demonstrated as a result.

*Cyprus – Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253 (5<sup>th</sup> Cir. 1997). There is no requirement that these four factors are considered in any particular order or the weights given each in any way. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 293 (5<sup>th</sup> Cir. 2009).

#### D. Private Placement

Courts have also provided the parameters for determining whether a student's parent is entitled to reimbursement for a unilateral private placement in those instances where it is established that the school district's program does not provide the student with FAPE. Where tuition reimbursement is sought after a parent's unilateral placement, case law provides that at

least three factors are to be considered, in what is often called the three prongs of the Burlington-Carter test. See Sch. Comm. of Burlington v. Mass. Dept. of Ed., 471 U.S. 359 (1985); Florence Cnty. Sch. Dist. Four v. Carter, 510 U.S. 7 (1993).

These factors include whether a school district provided the student a FAPE; if the district failed to provide FAPE, then whether the private placement chosen is appropriate; and a consideration of the equities in requiring a district to pay for a unilateral placement for the student. *Id.*

#### E. Procedural Considerations

With regard to issues of the failure to provide FAPE as a result of procedural violations of the IDEA, the law holds that a hearing officer may find that a child did not receive FAPE in limited circumstances. Specifically, if the procedural violations rise to the level of impeding a child's access to FAPE, significantly denying parents the opportunity or ability to participate in the child's education, or causing a deprivation of educational benefit, then those violations could be considered a denial of FAPE. 34 C.F.R. §300.513(a)(2); *Rowley*.

## VI. Analysis

In this case, Petitioner brings forth issues alleging a violation of Child Find and a denial of FAPE. The following discussion examines these issues, considering the documentary evidence, testimony of the witnesses, issues and arguments presented, and the applicable law.

### A. Child Find: Identification and Evaluation

Petitioner has claimed that the District failed its Child Find duties in failing to evaluate the student for special education. More specifically, the claim is that the District failed to complete a special education evaluation prior to the time they did. While the Child Find claim seems to focus on the Student's dyslexia, the evidence demonstrates much more frequent mention of mental health issues. When the Student struggled to complete assignments, the reasons provided included illness, mental health issues, and \*\*\* issues. There was no evidence presented showing that a reason that the work was not complete (which was established as the primary, if not the sole, reason for lower grades) was due to an inability to read or difficulty with reading, comprehension, or understanding.

While the testimony of the Student indicated that Student struggled with reading, it was never observed by the District. And in the numerous emails that the Student sent to Student's teachers and counselors, Student never mentions any difficulties with reading or comprehension, other than a note in one email that Student did not understand two questions on a test. Further, Dr. \*\*\*, the District dyslexia expert, noted that the District had no evidence that the Student

could not read. In fact, she stated that the evidence was that Student was definitely able to read, noting Student was on level and passed all STAAR and EOC examinations without accommodations, and even did well in at least \*\*\* classes. Further, none of Student's teachers, including the \*\*\* teachers, saw any deficits and a few teachers noted Student's strengths in comprehension.

In order to prevail on a Child Find claim, the petitioner must prove that: the District was on notice or had reason to believe the student had a disability, AND by reason of the disability needed special education and related services.

In this case, the overwhelming evidence demonstrated that the District did not suspect that the Student had a disability, or that there was any need for specially designed educational or related services. The testimony of the Student's teachers was unanimous in demonstrating that the Student was able to read, and was a good student, but for Student's failure to always turn in assignments in a timely manner. They testified that they did not see any "red flags" that gave them any thought that Student might need referred to special education.

Petitioner cites a number of cases where a school district either failed to evaluate a student or alternatively delayed the evaluation. For example, *Vista Unified Sch. Dist.*, 119 LRP 32331 (SEA CA 07/24/19); *Spring Branch Ind. Sch. Dist. v. O.W.*, 961 F.3d 781 (eth Cir. 2020); *Kraweitz by Parker v. Galveston Indep. Sch. Dist.*, 900 F. 3d 673 (5<sup>th</sup> Cir. 2018); *R.B. v, N.E. Indep. Sch. Dist.*, Case No. SA-20-CV-01441 (02.15.2022, W.D. Tex. 2022).

In those cases, however, it was clear that the district in question had information, some provided by the parents, that indicated the severity of the student's mental health issues, knew of hospitalizations and theft, egregious behavior, and had previously been a special education student in the district. In some instances, evaluations had been provided to the district. This case is different. Not only did the parents not share the information (but for the ADHD in April of 2022 when requesting a 504 accommodation) and evaluation, they also declined to provide consent for the FIE when the District was prepared to conduct it.

In terms of the Student's performance, it was similar to what Student had been doing throughout Student's time in the District, but for the time of online attendance. Further, at those times during the semesters when the grade books showed that Student was failing courses, it was essentially always due to the failure to timely turn in assignments. The Fifth Circuit was clear in noting that the IDEA has a presumption in favor of a school's education plan. *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 377 (5<sup>th</sup> Cir. 2003). Likewise, some deference should be given to teachers' evaluations and impressions, as they are with the student each day. In this instance, input from the Student's teachers when they completed forms for the District or the private evaluation were consistent in not recognizing any indicator that signaled a special

education referral. The credible evidence clearly shows that the District had no reason to suspect a need for special education and related services. As Petitioner bears the burden to demonstrate that the District failed its Child Find obligation, and It was not established that the District had any reason to suspect a disability, Petitioner does not prevail on this issue.

During the hearing, there was a great deal of evidence concerning the impact that Covid had on students, at \*\*\*, in Conroe ISD, and throughout the United States. Petitioner points out that Covid did not excuse school districts from their Child Find obligations. Clearly it does not. But it did not appear that the District was requesting to be excused from such IDEA mandated obligation. Rather, what the testimony did demonstrate was that the pandemic had a negative and problematic impact on all students, including general education students. Much of what the District observed with the Student in this case was seen in many, perhaps as some testimony indicated, the majority of students. Hence, again the District had no reason or red flag indicated the need for a special education referral for this Student.

Petitioner also requested that the District reimburse Petitioner for the private evaluation that was completed in April-May 2022. It is well-settled that when seeking an Independent Educational Evaluation, that the District has the right to conduct their evaluation first. It is only then, if the parents are dissatisfied with a district's evaluation, that they request a private one at district expense. See 34 C.F.R. § 502. Here, the evidence is clear that the parent declined the District's FIE in April 2022 and again in August 2022. The District did not have an opportunity to do its evaluation. When consent was provided for the FIE, the private evaluation had been complete, although the District likely did not know about it. The evidence and law do not support the Petitioner's claim for reimbursement for the private evaluation completed in May 2022.

#### **B. Provision of FAPE and Private Placement**

Looking chronologically at this case, the request for reimbursement of the private placement is for a time when the student was not in special education, and, in fact, no request had yet been made for an evaluation. Understanding that it is Petitioner's position that the District should have suspected a disability and need for specially designed instruction, the burden on the Child Find issue was not met. Thus, as the Student at the time of the private placement at \*\*\* was not a student with a disability, Student was not entitled to FAPE. Additionally, most of this time period falls outside of the statute of limitations. Thus, any further discussion of the Burlington-Carter prongs is not needed. Petitioner has not met Petitioner's burden to establish that Petitioner is entitled to reimbursement for the unilateral private placement at \*\*\*.

#### **C. Claim for Reimbursement for Private 504 Services**

It appears from the complaint, the evidence presented, and the Petitioner's Closing Brief, that a claim has been made for reimbursement for the private dyslexia tutoring services. As special education hearing officers have no jurisdiction over 504 claims, this claim cannot be addressed. However, it is noted that the Petitioner did decline those services offered by the District.

If, in the alternative, Petitioner is asserting reimbursement of these services under the grounds of compensatory services, the basis has not been established. The District did not violate Child Find, and once the Student was found to be in need of services and accommodations for dyslexia, the District provided them. The cost for the private services was incurred due to the rejection of the District's proposed offer of services.

#### **D. Provision of FAPE subsequent to the FIE**

However, at a subsequent time, in early 2023, the Student did qualify as a student with a disability, so now an inquiry regarding the adequacy of the Student's IEP is appropriate.

The first consideration is whether the District was able to provide the Student a FAPE. Controlling in this matter is the four-prong analysis set forth by the Fifth Circuit, often referred to as the *Michael F. test*. *Cyprus-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997). In examining whether the IEP in question provides a program that provides the Student FAPE, the components are reviewed.

##### *Factor I: Was the Program Individualized Based on Student's Assessments and Performance?*

The subject IEPs were developed in February-March 2023. There was little evidence about how or why the services were offered. In fact, the counselor, the LSSP intern at the time was also the counselor who provided the minimal counseling services to the Student. She had no basis or justification for the services that were offered and explained the \*\*\* as 'strategies'. Her supervisor at the time, and a longtime District LSSP, clearly noted that \*\*\* is not the 'crux' of counseling as a related service.

While a \*\*\* goal was included in the IEP, no corresponding service was offered. Further no goal or services were offered concerning dyslexia.

In summary, the District crafted the IEP without all of the sufficient data and failed to include services that were reasonably calculated to provide the Student an educational benefit and make non-educational progress in light of the circumstances and the Student's unique needs. *Andrew*. As such, the IEP was insufficient to provide the Student FAPE.

##### *Factor II: Was the Program Delivered in the Least Restrictive Environment ?*

As the Student was always in general education classes throughout Student's time in the District, there is no issue regarding the least restrictive environment (LRE).

*Factor III: Were the Services Developed and Provided in a Coordinated and Collaborative Manner by Key Stakeholders.*

This factor requires that the educational program be developed by the key stakeholders, in a coordinated and collaborative fashion. The evidence was clear that all stakeholders, including the \*\*\* Student \*\*\*self was included in all meetings and often interacted with District.

*Factor IV. Did the Student Demonstrate Positive Academic and Non-academic Benefits ?*

This factor is difficult to determine, as the services were minimal. However, based upon the Student's own testimony and even that of the counselor, the evidence seems to indicate that no benefit was demonstrated.

Petitioner has met Petitioner's burden to establish that the program, the IEP, developed by the District did not provide FAPE.

#### E. Procedural Violations

Regarding any procedural violations that may rise to the level of a denial of FAPE, no evidence of such procedural violations have established a denial of FAPE.

### **VII. Conclusions of Law**

1. The Conroe Independent School District (CISD) is responsible for properly identifying, evaluating, and serving students under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.
2. Petitioner failed to carry the burden of proof to establish a that CISD violated its Child Find obligations. 34 C.F.R. §300.111. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984).
3. Petitioner did not meet the burden of proof or grounds to establish a legal basis for the claims for reimbursement of private dyslexia tutoring, private placement or the private evaluation, as the burden is on the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005).
4. Petitioner did qualify as a student with a disability who is eligible for special education and related services under the IDEA. 34 C.F.R. §300.8.

5. The District (CISD) failed to provide Petitioner with a FAPE from March \*\*\*, 2023 until the time that Student \*\*\*. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F. 3d 245 (5<sup>th</sup> Cir. 1997).

### VIII. Relief and Order

While Petitioner did not establish a violation of Child Find, after the Student was evaluated and found eligible for special education, the District had a duty to provide FAPE. The evidence established that the District failed to provide the student FAPE due to the inadequacy of the provisions, as well as the implementation of the Student's IEP. As special education hearing officers have broad discretion in the provision of relief under the IDEA, the relief must also be appropriate. *Sch. Cmte. Of Town of Burlington Mass. V. Dept. of Educ. Of Mass.*, 471 U.S. 359, 369 (1985). Thus, compensation for this violation is appropriate.

Accordingly, as at the time of the ARD meeting there were approximately nine weeks of school remaining in the 2022-2023 school year. As such, the following relief is awarded:

1. Nine (9) weeks of dyslexia tutoring at one, one-hour session per week with the provider of the Petitioner's choice, with the cost not to exceed \$900.00;
2. Counseling services for nine weeks, at one one-hour session per week with the provider of choice, with the cost not to exceed \$ 2,000.00; and
3. That the District provide \*\*\* services to Petitioner.

IT IS HEREBY ORDERED that the above-referenced relief be completed no later than July 31, 2024. It is further ORDERED that all other relief not specifically stated and ordered herein is hereby DENIED.

Signed this 15<sup>th</sup> day of March, 2024.

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Kimberlee Kovach

Special Education Hearing Officer for the  
State of Texas

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. 1415 I.2. 19 Tex. Admin. Code §89.1185(n); Tex. Gov't Code, § 2001.144(a)-(b)(g).